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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

RENE DE LEON,

Petitioner and Appellant,

v.

VINCE FLORES et al.,

Defendants and Respondents.

F077038

(Super. Ct. No. 17C0184)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kings County. Valerie R. Chrissakis, Judge.

Rene De Leon, in pro. per., for Petitioner and Appellant.

Xavier Becerra, Attorney General, Monica N. Anderson, Assistant Attorney General, Damon G. McClain and Lucas L. Hennes, Deputy Attorneys General, for Defendants and Respondents.

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The superior court denied Rene De Leon's petition for relief from the claim filing requirements in the Government Claims Act (Gov. Code, § 810, et seq.)¹ on the ground

* Before Franson, Acting P.J., Meehan, J. and Snauffer, J.

¹ Subsequent unlabeled statutory references are to the Government Code.

the petition was untimely. The petition was filed 14 months after the Government Claims Board (Board) denied De Leon's application for leave to file a late claim and denied the claim itself. De Leon appealed, raising two basic questions. First, can the six-month statutory period for petitioning a superior court for relief from the claim presentation requirements be stopped or suspended based on equitable considerations? (See § 946.6, subd. (b) [six-month limitation period].) The California Supreme Court has answered this question "yes." (*J.M. v. Huntington Beach High School Dist.* (2017) 2 Cal.5th 648 (*J.M.*)). Second, were the equitable circumstances presented by De Leon sufficient to suspend the running of the six-month period for at least eight months, thereby rendering his petition timely? As explained below, we conclude the superior court did not abuse its discretion when it determined the circumstances of this case do not justify suspending the limitation period for eight months.

We therefore affirm the judgment of dismissal.

FACTS AND PROCEEDINGS

De Leon was an inmate of the California Department of Corrections and Rehabilitation (CDCR) at the times relevant to this proceeding. He has the equivalent of a ninth-grade education and Spanish is his primary language. On July 7, 2015, De Leon's prison job assignment was to work as an inmate day laborer on a construction project on prison grounds under the supervision of an outside building contractor. The three-story scaffold on which De Leon was standing gave way and he landed flat on his back on the second-story platform of the scaffold. The first responder medical defendants did not apply a neck brace before moving De Leon. Instead, they ordered him to (1) get up, (2) walk to the ladder portion of the scaffold, and (3) climb down the ladder to the ground floor. They sent De Leon to his prison cell without having him examined by a physician. De Leon alleges the negligent acts and omissions of defendants were a proximate cause of the fall and the subsequent negligent acts and omission of the first responder medical defendants exasperated the injuries sustained in the fall.

Following the incident, De Leon was concerned about the long-term consequences and whether he would be able to make a living when he was released from prison. He asked the staff at the prison's law library to assist him in pursuing litigation. The staff told De Leon he needed to file an inmate grievance on CDCR form 602 to exhaust his administrative remedies before filing a claim form under the Government Claims Act.² De Leon believed this advice to be accurate. Subsequently, he learned from another inmate that the government claims form had to be filed six months from the date of the incident, not within six months of the exhaustion of administrative remedies.³

On February 5, 2016—a few days short of seven months after the incident—De Leon filed a government claim form along with an application for leave to file a late claim. In April 2016, the Board sent De Leon a letter stating it had denied his application for leave to present a late claim. In addition, the letter stated the Board rejected the claim itself. De Leon believes the Board erred in denying his application for leave to file a late claim because the applicable six-month period should have been tolled while he was exhausting an administrative remedy with the prison based on the erroneous advice of law library staff.

After the Board rejected his application and claim, De Leon attempted to find an attorney who would represent him on a contingency fee or pro bono basis because he lacked the funds to hire an attorney. He was unsuccessful. Papers filed by De Leon with the superior court include copies of three letters from attorneys declining to represent him

² Inmate grievances and the three levels of administrative review applied to such grievances are discussed by this court in *Villery v. Dept. of Corrections & Rehabilitation* (2016) 246 Cal.App.4th 407 and *Menefield v. Foreman* (2014) 231 Cal.App.4th 211. The time limits for the three levels of administrative review conducted by CDCR officials are set forth in section 3084.8 of title 15 of the California Code of Regulations.

³ “[T]he cases make it plain that plaintiff’s obligation to exhaust the administrative remedies available to prisoners ... is independent of the obligation to comply with the Government Claims Act.” (*Parthemore v. Col* (2013) 221 Cal.App.4th 1372, 1382.)

in the matter. Eventually, De Leon was introduced to an inmate who was a paralegal with experience in personal injury matters. The inmate assisted De Leon in pursuing the petition in the superior court and this appeal.

On June 30, 2017, De Leon filed a petition in the Kings County Superior Court for relief from the claim presentation requirements. This type of petition is authorized and governed by section 946.6. The statutory text creating the limitations period at issue here states: “The petition shall be filed within six months after the application to the board [for leave to present a late claim] is denied ... pursuant to Section 911.6.” (§ 946.6, subd. (b).) Here, the petition was filed approximately 14 months after the Board’s April 2016 denial of De Leon’s application for leave to file a late claim.

The superior court scheduled a hearing on an order to show cause why the petition should not be summarily denied as untimely. De Leon filed a written opposition to the order to show cause and a declaration setting forth his explanation for the failure to file the petition for relief within the six-month period specified in section 946.6, subdivision (b). His declaration recounted (1) his education level and difficulty in reading English, (2) the advice from prison library staff about the need to file an inmate grievance before filing a claim form under the Government Claims Act, and (3) his diligent yet unsuccessful attempts to obtain legal counsel.

On January 18, 2018, after the hearing, the superior court issued a written decision denying the petition. First, the court referred to cases stating the six-month period was a statute of limitations and strictly applied. As a result, the court concluded it did not have the discretion to extend the six-month period based on excusable mistake or neglect. Second, the court considered De Leon’s contentions about his language and skill barriers and the difficulty in obtaining the assistance of counsel. The court stated it “does not find good cause to extend the 6 month time limitation by another 8 months, even if this court had discretion to do so.” The written decision then stated: “The petition for relief from

the claims filing requirements is summarily denied. A judgment of dismissal is entered.” De Leon filed a timely notice of appeal from the judgment of dismissal.

DISCUSSION

I. STANDARD OF REVIEW

An order denying a section 946.6 petition for relief from the claims presentation requirements in the Government Claims Act is an appealable order. (*DeVore v. Department of California Highway Patrol* (2013) 221 Cal.App.4th 454, 459.) The superior court’s denial of such a petition is reviewed for an abuse of discretion. (*Id.* at p. 460.)

Abuse of discretion is not a unified standard but varies according to the type of ruling under review. (*Haraguchi v. Superior Court* (2008) 43 Cal.4th 706, 711–712.) When a superior court’s ruling decides legal issues, such as jurisdictional questions and matters of statutory interpretation, the appellate court conducts an independent review of those determinations. In other words, “the abuse of discretion standard does not allow trial courts to apply an incorrect rule of law.” (*County of Kern v. T.C.E.F., Inc.* (2016) 246 Cal.App.4th 301, 316.)

II. RELIEF FROM CLAIM PRESENTATION REQUIREMENTS

A. Workers’ Compensation as Exclusive Remedy

Defendants contend that De Leon’s underlying claim is for an on-the-job injury and, consequently, his exclusive remedy is through the workers’ compensation process and not through a civil lawsuit. The only legal authority offered to support this position is Labor Code section 3602. Also, defendants provide no citation to the record showing this issue was raised in the trial court.

Labor Code section 3602, subdivision (a) provides in part: “Where the conditions of compensation set forth in Section 3600 concur, the right to recover compensation is, except as specifically provided in this section and Sections 3706 and 4558, the sole and

exclusive remedy of the employee or his or her dependents against the employer.” Labor Code section 3602 makes no reference to prisoners or inmates.

In contrast, Labor Code section 3370 specifically addresses inmates of state penal and correctional institutions. “(a) Each inmate of a state penal or correctional institution shall be entitled to the workers’ compensation benefits provided by this division for injury arising out of and in the course of assigned employment ... subject to all of the following conditions: [¶] ... [¶] (3) No benefits shall be paid to an inmate while he or she is incarcerated. The period of benefit payment shall instead commence upon release from incarceration.... [¶] ... [¶] (7) After release or discharge from a correctional institution, the former inmate shall have one year in which to file an original application with the appeals board, unless the time of injury is such that it would allow more time under Section 5804 of the Labor Code. [¶] ... [¶] (9) This division shall be the exclusive remedy against the state for injuries occurring while engaged in assigned work or work under contract. *Nothing in this division shall affect any right or remedy of an injured inmate for injuries not compensated by this division.*” (§ 3370, subd. (a), italics added.)

Generally, “‘issues not raised in the trial court cannot be raised for the first time on appeal.’” (*Johnson v. Greenelsh* (2009) 47 Cal.4th 598, 603; 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 400 [point not properly raised below].) Appellate courts, however, have the discretionary authority to address questions not raised in the trial court when the new theory involves only a legal question determinable from facts that are (1) uncontroverted in the record and (2) could not have been altered by the presentation of additional evidence. (*Esparza v. KS Industries, L.P.* (2017) 13 Cal.App.5th 1228, 1237–1238.) Whether all of De Leon’s injuries are covered this workers’ compensation provision involves questions of fact that were not litigated in the lower court proceeding. Accordingly, we will not consider and resolve defendants’ argument based on the workers’ compensation statute.

B. Six-month Period

The facts relevant to a literal application of the statutory limitations period are undisputed. On April 29, 2016, the Board denied De Leon’s application for leave to file a late claim. Approximately 14 months later, on June 30, 2017, De Leon filed a petition for relief from the claim presentation requirement in the superior court.

When a late claim application is denied by the Board, the applicant’s last recourse is to petition the superior court for relief from the claim filing requirements. (*J.M., supra*, 2 Cal.5th at pp. 653–656.) “The petition *shall* be filed within six months after the application to the board is ... deemed to be denied pursuant to Section 911.6.” (§ 946.6, subd. (b), italics added.) When used in the Government Code, *shall* is mandatory. (§ 14.) The California Supreme Court has addressed this time limit by stating: “The six-month period ‘operates as a statute of limitations. It is mandatory, not discretionary.’ (*D.C. v. Oakdale Joint Unified School Dist.* (2012) 203 Cal.App.4th 1572, 1582 [138 Cal.Rptr. 3d 421], citing cases.)” (*J.M., supra*, 2 Cal.5th at p. 653.) In other words, superior courts do not have the authority to conclude substantial compliance with the time limit is good enough.

In this case, a literal application of the mandatory six-month time limit leads to the conclusion that De Leon’s petition for relief was untimely. Our analysis, however, does not end there. In *J.M., supra*, 2 Cal.5th 648, the Supreme Court concluded there was no statutory recourse for the plaintiff’s failure to petition the superior court within six months of the denial of the plaintiff’s late claim application. (*Id.* at p. 656.) However, the court considered the plaintiff’s arguments for equitable relief from the limitations period under the doctrines of equitable estoppel and equitable tolling. We follow the same course here and consider the application of those equitable theories.

C. Equitable Theories

As background, we note that California’s statutes of limitation are subject to a handful of modifications and equitable exceptions, some of which alter the running of the

limitations period while others address when a cause of action accrues. (*Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1192.) The exceptions include equitable tolling, equitable estoppel, and waiver. (*Ibid.*; *Prudential-LMI Com. Insurance v. Superior Court* (1990) 51 Cal.3d 674, 689 [defendant may waive—i.e., intentionally relinquish—the right to rely on the statute of limitations]; *Ard v. County of Contra Costa* (2001) 93 Cal.App.4th 339, 348 [plaintiff granted leave to amend to allege equitable estoppel prevented the claim from being time barred].)

1. *Equitable Tolling*

In the context of statutes of limitation, “ ‘tolled’ ” means “ ‘suspended’ ” or “ ‘stopped.’ ” (*Mitchell v. State Dept. of Public Health* (2016) 1 Cal.App.5th 1000, 1011.) When a limitations period is tolled, that tolled interval is tacked onto the end of the limitations period. (*Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 370–371.)

Equitable tolling will suspend the running of a statute of limitations while a plaintiff with multiple legal remedies for the same harm pursues one of those remedies, provided certain elements are present. The elements of “equitable tolling [are] timely notice, and lack of prejudice, to the defendant, and reasonable and good faith conduct on the part of the plaintiff.” (*Addison v. State of California* (1978) 21 Cal.3d 313, 319.) Stated in more detail, these elements are “(1) timely notice to the defendant against whom the doctrine will apply given at or about the time of seeking the first remedy; (2) lack of prejudice to the defendant in gathering evidence and preparing for the second remedy; and (3) good faith and reasonable conduct by the plaintiff. [Fns. omitted.]” (1 Schwing & Carr, Cal. Affirmative Defenses (2018) Statute of Limitations, § 25:70, pp. 1871–1872.) A rationale for equitable tolling is efficiency—both for the parties and the judicial system.

Here, the doctrine of equitable tolling does not apply to the circumstances that existed between the Board’s denial of De Leon’s application for leave to file a late claim

and the filing of his petition for relief in the superior court. At no time during that period was De Leon pursuing an alternate remedy, such as a remedy available in an administrative proceeding. Accordingly, there is no basis for concluding the six-month limitations period was equitably tolled by pursuit of an alternate remedy. In *J.M., supra*, 2 Cal.5th 648, the Supreme Court rejected the plaintiff’s equitable tolling argument because the six-month period for seeking relief under section 946.6 had expired before counsel for plaintiff pursued the alternate remedy of filing a complaint. (*J.M., supra*, at pp. 657–658.) The court also concluded the other circumstances advanced by the plaintiff were an insufficient basis for equitable tolling—that is, an injustice to the plaintiff that outweighs the effect upon the important public interest or policy expressed by the Government Claims Act limitations statute. (*Id.* at p. 658.) Here, the trial court did not abuse its discretion in determining the circumstance presented did not establish an injustice that warranted extending the limitations period by eight months. (See Lab. Code, § 3370, subd. (a)(7) [former inmate shall have one year after release or discharge in which to file an original application with the workers’ compensation appeals board].)

2. *Equitable Estoppel*

First, we consider whether equitable estoppel may be applied to a statute of limitations that protects governmental entities and officials. “The doctrine of equitable estoppel may be applied against the government where justice and right require it.” (*Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 305; 30 Cal.Jur.3d (2013) Estoppel and Waiver, § 5, pp. 826–829 [availability against governmental entities].) More specifically, “[i]t is well-settled that a public entity may be estopped from asserting the limitations of the claims statute where its agents or employees have prevented or deterred the filing of a timely claim by some affirmative act.” (*John R. v. Oakland Unified School Dist.* (1989) 48 Cal.3d 438, 445; see *J.M., supra*, 2 Cal.5th at p. 656 [“elements of equitable estoppel have been applied in the government claims context”].)

Stated in general terms, equitable estoppel arises where a prospective defendant induces a prospective plaintiff to forgo protecting his or her rights, the plaintiff subsequently attempts to assert the rights, and the defendant raises a defense based on the plaintiff's lapse. "A valid claim for equitable estoppel requires: (a) a representation or concealment of material facts; (b) made with knowledge, actual or virtual, of the facts; (c) to a party ignorant, actually and permissibly, of the truth; (d) with the intention, actual or virtual, that the ignorant party act on it; and (e) that party was [reasonably] induced to act on it. (13 Witkin, Summary of Cal. Law (10th ed. 2005) Equity, § 191, pp. 527–528.) There can be no estoppel if one of these elements is missing. (*Id.* at p. 528.)" (*Simmons v. Ghaderi* (2008) 44 Cal.4th 570, 584; *Santos v. Los Angeles Unified School Dist.* (2017) 17 Cal.App.5th 1065, 1076 [plaintiff's reliance on defendant's conduct must be reasonable under the circumstances] (*Santos*).)

"Equitable estoppel generally requires an *affirmative* representation or act by the public entity." (*J.M., supra*, 2 Cal.5th at p. 657.) For example, it is not uncommon for equitable estoppel to result from a public entity's misleading statements relating to the claims procedure. (See *Santos, supra*, 17 Cal.App.5th at pp. 1075–1076.) Also, estoppel may be found where the public entity engaged in calculated conduct or concealed facts that induced the plaintiff to forgo action required by the claims statute, such as filing a claim or bringing the lawsuit within the statutory time. (*Ibid.*) Equitable estoppel involves some degree of fault or blame on the part of the party to be estopped. (30 Cal.Jur.3d, *supra*, Estoppel and Waiver, § 3, p. 824.) "[T]he doctrine will not be applied against one who is blameless." (*Ibid.*)

Here, De Leon presented no evidence or argument about misleading statements regarding the procedure and time limits for going to court to challenge the Board's denial of his application for leave to file a late claim. The misinformation De Leon received from the law library staff related to filing the claim with the Board; it did not relate to seeking relief in the superior court. Thus, that misinformation was not a reason De Leon

missed the six-month deadline for filing a petition for relief. Similarly, he has presented no evidence or argument about active concealment of information relating to petitions in the superior court for relief from the claim presentation requirements. Without the concealment or misrepresentation of a material fact, defendants cannot be equitably estopped from raising the six-month limitations period as a bar to De Leon's petition. Accordingly, the elements of equitable estoppel are not present in this particular case, and the trial court did not err in concluding the petition was untimely.

DISPOSITION

The judgment of dismissal is affirmed. The parties shall bear their own costs on appeal.